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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

STATE OF ALASKA,

Plaintiff,

v.

UNITED STATES OF AMERICA, *et al.*,

Defendant.

CASE NO. 3:18-cv-00265-HRH

**UNITED STATES OF AMERICA'S
CROSS-MOTION FOR SUMMARY
JUDGMENT**

Pursuant to Federal Rules of Civil Procedure 7 and 56 and this Court's November 10, 2022 Order, Dkt. 54, the United States of America moves for partial summary judgment or, in the alternative, to establish the law of the case.

Navigability is a fact-intensive inquiry and "each determination as to navigability must stand on its own facts," *United States v. Utah*, 283 U.S. 64, 81 (1931), but the undisputed facts in this case implicate certain rules suited for summary judgment. The

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United States respectfully requests three legal rulings at this time: First, that downstream-only floating shown by the undisputed facts is not in-and-of-itself use of a river as a highway of commerce under controlling federal law. Second, that proving depth and width of water in a river is not sufficient to show the river is navigable under controlling federal law. And third, that the undisputed facts show inflatable rafts, canoes, airboats, and jet boats were not customary modes of trade and travel at statehood. To the extent disputed facts preclude this final request, the United States alternatively requests a ruling requiring that any proof of “susceptibility” to navigation at statehood be based on watercraft that were modes of (1) trade and travel (2) customary for commerce that could realistically have occurred on the disputed reach (3) at the time of statehood.

Dated: November 14, 2022.

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Certificate of Service

I certify that on **November 14, 2022** the foregoing, **United States of America's Cross-motion for Summary Judgment** was served via the court's CM/ECF system, which electronically served all parties.

/s/ Thomas W. Ports, Jr.
Thomas W. Ports, Jr.